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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,737	08/04/2003	Timothy R. Lang	904.002	5593

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EXAMINER

GOODWIN, JEANNE M

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,737

Applicant(s)

LANG, TIMOTHY R.

Examiner

Jeanne-Marguerite Goodwin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 9, 10 and 12-18 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/08/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 and 8 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,748,568 to Harrison [hereinafter Harrison '568].

As per claim 1: Harrison discloses a timepiece in Figs. 5a-5d illustrating a display face including a first color on the face corresponding to a current predetermined measurement of time and a second color on the face corresponding to a consecutive predetermined measurement of time, wherein the second color fills the face clockwise as an interval of time elapses.

As per claim 2: Furthermore, Harrison illustrates the first color being a current hour (Fig. 5a, hour 12), the second color is a consecutive hour and the interval of time corresponds to minutes (Fig. 5a, 7 minutes).

As per claim 3: Furthermore, Harrison illustrates a line being created by the intersection of the first color with the second color on the display face, wherein the position of the line along the display face indicates the number of minutes that have passed in the current hour, and wherein the line is not displayed on the face when 60 minutes have elapsed and the face is filled entirely with the second color.

As per claim 4: Furthermore, the display face of Harrison appears to be circular in shape.

As per claim 8: Furthermore, the timepiece of Harrison is in fact a watch.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 19 and 20 rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,711,101 to Bornovski [hereinafter Bornovski].

As per claim 19: Bornovski discloses a display portion for telling time comprising assigning a different color to a predetermined measurement of time; displaying on a face of a timepiece a first color corresponding to a current predetermined measurement of time and a second color corresponding to a consecutive predetermined measurement of time, wherein each of the colors are displayed in a continuous loop representing the predetermined measurements of time that elapse in the day; and filling the display portion of the timepiece with the second color as an interval of time elapses (see Figs. 1 & 8-10). The method steps will be met during the normal operation of the apparatus stated above.

As per claim 20: Bornovski further discloses, wherein the predetermined measurement of time corresponds to each of the hours in a day and the interval of time corresponds to the minutes in an hour (see Figs. 8-10). The method steps will be met during the normal operation of the apparatus stated above.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison '568 in view of US Pub. 2003/0193842 to Harrison [hereinafter Harrison '842].

As per claim 5: Harrison discloses a timepiece comprising a color-to-hour matrix in which 24 colors are assigned to 24 hours of the day (see paragraph [0196]). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the single hour color assembly of Harrison '568, with the color-to-hour matrix, as taught by Harrison '842, in order to eliminate the need for an a.m./p.m. indicator, as already suggested by Harrison '842.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison '568 in view of US Patent 4,206,592 to Maue.

As per claim 6: Maue discloses a timepiece using 12 distinguishable colors (see column 5, lines 5-7) to represent one hour of a 12-hour period. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the single

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hour color assembly of Harrison '568, with the 12 distinguishable color hour assembly, as taught Maue, in order to be able to indicate time by color, as already suggested by Maue.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison '568.

As per claim 7: Harrison '568 discloses the numerical hour indicia being displayed in the center of the display face. With respect to the numerical hour indicia being displayed along a circumferential edge of the face, changing the location of the numerical hour indicia from the center of the face as shown by Harrison '568 to a location along the circumferential edge of the face, absent any criticality, is also considered an obvious modification of Harrison '568 device, that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in shifting the position of a structure to a different position if the operation of the device would not be thereby modified. In re Japikse, 86 USPQ 70 (CCPA 1950).

Allowable Subject Matter

9. Claims 9-18 allowed.

Response to Arguments

10. Applicant's arguments filed April 24, 2006 have been fully considered but they are not persuasive.

Regarding arguments on page 6, lines 16-18: In response to Applicant's argument that Harrison '568 does not include certain features of Applicant's invention, the limitations on which the Applicant relies (i.e., being directed to a timepiece that correlates specific colors with

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specific predetermined measurements of time) are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specification that are anticipated or unpatentable. See *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ2d 1064.

Regarding arguments on page 6, lines 20-26: The arguments with respect to claims 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

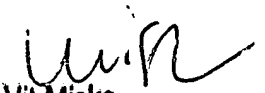
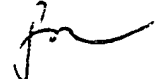
Regarding arguments on page 8, lines 6-9: In response to Applicant's argument that Harrison '568 does not include certain features of Applicant's invention, the limitations on which the Applicant relies (i.e., the use of color alone to depict the passage of time in both hours and minutes) are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specification that are anticipated or unpatentable. See *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ2d 1064.

Moreover, regarding prior art, Harrison's '568 display face including a first color corresponds to a current predetermined measurement of time, e.g., the numerical hour indicia, and a second color on the face corresponds to a consecutive predetermined measurement of time, wherein the second color fills the face clockwise as an interval of time elapses. Regardless, if Harrison '568 uses shading (to pass from one color to another by very slight changes or degrees, *American Heritage College Dictionary*, 4th Edition) it can still be considered a second color because it is a different color than the first color on the display face and the user is completely able to draw observations on time based on the shading (e.g., color) (see col. 4, lines 23-26 and col. 6. lines 30-35).

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Conclusion

11. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Jeanne-Marguerite Goodwin whose telephone number is (571) 272-2104. The examiner can normally be reached on Monday-Friday (9am-6pm), alternate Fridays off. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2861.


Vit Miska
Primary Examiner 

JMG
July 10, 2006

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